

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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GABRIEL HILLERY,

Plaintiff,

v.

HORROUN et al.,

Defendants.

Case No. 3:16-cv-00232-MMD-VPC

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a former state prisoner. On December 8, 2016, the Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within thirty (30) days. (ECF No. 4 at 8.) The thirty-day period has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856

1 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring  
2 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833  
3 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*  
4 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and  
5 failure to comply with local rules).


6 In determining whether to dismiss an action for lack of prosecution, failure to obey  
7 a court order, or failure to comply with local rules, the court must consider several factors:  
8 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
9 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
10 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
11 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
12 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

13 In the instant case, the Court finds that the first two factors, the public's interest in  
14 expeditiously resolving this litigation and the Court's interest in managing the docket,  
15 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs  
16 in favor of dismissal, since a presumption of injury arises from the occurrence of  
17 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See  
18 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor — public policy  
19 favoring disposition of cases on their merits — is greatly outweighed by the factors in  
20 favor of dismissal discussed herein. Finally, a court's warning to a party that his failure to  
21 obey the court's order will result in dismissal satisfies the "consideration of alternatives"  
22 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
23 at 1424. The Court's order requiring Plaintiff to file an amended complaint within thirty  
24 (30) days expressly stated: "It is further ordered that if Plaintiff fails to file an amended  
25 complaint curing the deficiencies outlined in this order, this action will be dismissed  
26 without prejudice." (ECF No. 4 at 8.) Thus, Plaintiff had adequate warning that dismissal  
27 would result from his noncompliance with the Court's order to file an amended complaint  
28 within thirty (30) days.

1 It is therefore ordered that this action is dismissed without prejudice based on  
2 Plaintiff's failure to file an amended complaint in compliance with this Court's December  
3 8, 2016, order.

4 It is further ordered that the Clerk of Court enter judgment accordingly.

5 DATED THIS 19<sup>th</sup> day of January 2017.

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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE  
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